This article shows how very justified Congress was, from legal and related perspectives, in selecting PBS for favored status in the Individuals with Disabilities Education Act. Given the efficacy of PBS and the large body of law favoring it, professionals, other advocates, families with children with challenging behaviors, administrative law judges, and courts would be well justified in requiring the strategy in appropriate cases, they do not need to rely solely on IDEA. Constitutional grounds for PBS include substantive due process, procedural due process, least restrictive alternative doctrine, equal protection, judicial deference to professional judgment, and the requirement of a nexus between person, intervention, and place.

The Constitution of the United States provides dual doctrines supporting Congress’ preference for PBS in the Fifth and Fourteenth Amendments.

The requirement of due process supports PBS by creating a liberty interest in personal autonomy that:

- Can only be overcome by a powerful state in interest
- Requires any violation of such autonomy in the name of the state interest to:
  - Use the least restrictive means available
  - Support a therapeutic purpose
  - Be targeted to effectively address the state interest

KEY FINDINGS

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- The requirement of due process supports PBS by creating a liberty interest in personal autonomy that:
  - Can only be overcome by a powerful state in interest
  - Requires any violation of such autonomy in the name of the state interest to:
    - Use the least restrictive means available
    - Support a therapeutic purpose
    - Be targeted to effectively address the state interest
• Equal protection requires that similarly situated people may not be treated differently based on an unalterable, unchosen trait. In other words, students with behavioral challenges must generally have the same right to educational services provided by the state unless:
  ♦ The state has an interest that supports different treatment
  ♦ The state’s action is in reasonable pursuit of the interest (a nexus exists)
  ♦ The state’s actions are not premised on prejudice alone
  ♦ The state’s actions are based on a professionally defensible rationale

• Other legal and political principles supporting PBS include:
  ♦ Deinstitutionalization and Integration
  ♦ Democratic participation
  ♦ The six principles of IDEA are:
    (1) Zero reject
    (2) Nondiscriminatory evaluation
    (3) Appropriate education
    (4) Least restrictive environment
    (5) Procedural due process
    (6) Parental participation

METHOD

• This article resulted from the analysis of the legal requirements set out in IDEA, the Constitution, and court cases interpreting the Constitution and the rights of individuals with disabilities.

RELATED PUBLICATIONS


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